

COTTONWOOD HEIGHTS

RESOLUTION No. 2012-26

A RESOLUTION APPROVING ENTRY INTO AN EASEMENT AGREEMENT WITH CABCO COTTONWOOD, LLC FOR THE BIG COTTONWOOD CANYON TRAIL

WHEREAS, as explained in detail in the urban trails element of its general plan, the city of Cottonwood Heights (the "*City*") desires to establish a public trail currently named the "Big Cottonwood Canyon Trail" (the "*Trail*") from the City's boundary near the "Knudsen Corner" intersection of I-215 and Holladay Blvd. to the Bonneville Shoreline Trail in Big Cottonwood Canyon; and

WHEREAS, a segment (the "*Segment*") of the proposed Trail crosses real property (the "*Property*") owned by Cabco Cottonwood, LLC ("*Grantor*"); and

WHEREAS, the City desires to obtain from Grantor, and Grantor desires to grant to the City, a public easement across the Property for Trail purposes; and

WHEREAS, consequently, Grantor and the City jointly desire to enter into an "Easement Agreement" (the "*Agreement*") whereunder Grantor will grant to the City a public easement across the Property for the purposes, and on the terms and conditions, specified in the Agreement; and

WHEREAS, the City's municipal council (the "*Council*") met in regular session on 22 May 2012 to consider, among other things, approving the City's entry into the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights that the attached Agreement with Grantor be, and hereby is, approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2012-26, shall take effect immediately upon passage.

PASSED AND APPROVED this 22nd day of May 2012.

COTTONWOOD HEIGHTS CITY COUNCIL



Linda W. Dunlavy
Linda W. Dunlavy, Recorder

By *Kelvyn H. Cullimore, Jr.*
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 22nd day of May 2012.

RECORDED this 23 day of May 2012.

579058.1

AFTER RECORDING, RETURN TO:

COTTONWOOD HEIGHTS
1265 East Fort Union Blvd., Suite 250
Cottonwood Heights, UT 84047

Easement Agreement

THIS EASEMENT AGREEMENT (this "*Agreement*") is made effective _____ 2012 by **CABCO COTTONWOOD, LLC**, a Utah limited liability company 10138 South 460 West, South Jordan, UT 84095 ("*Grantor*"), and **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 (the "*City*").

RECITALS:

A. Grantor owns certain real property which is located in Cottonwood Heights, Salt Lake County, Utah (the "*Property*").

B. As explained in detail in the urban trails element of its general plan, the City desires to establish a public trail (the "*Trail*") running from the City's boundary near "Knudsen Corner"(intersection of I-215 and Holladay Blvd.) to the Bonneville Shoreline Trail in Big Cottonwood Canyon. Establishment, construction and maintenance of the Trail likely would occur in conjunction with, or through, Salt Lake County (the "*County*") as part of the County's "Zoo, Arts and Parks" ("*ZAP*") program.

C. A segment (the "*Segment*") of the proposed Trail runs over the Property as shown on attached Exhibit A which is attached and incorporated by this reference.

D. The City desires to obtain from Grantor, and Grantor desires to grant to the City, an easement across the Property, for the purposes, and on the terms and conditions, specified in this Agreement.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

Section 1. **Grant of Easement.** Grantor hereby grants and conveys to the City a non-exclusive right-of-way and easement (the "*Easement*") under, over and across the Property as shown and described Exhibit A and Exhibit B which are attached and incorporated by this reference. The Easement is granted for the purpose of allowing the City to (a) construct, re-construct, install, maintain, use and operate (for public trail purposes), inspect, and repair the Segment of the Trail and associated improvements (the "*Improvements*"), together with all rights of ingress and egress over and across adjacent and contiguous property owned by Grantor, as shown on the attached exhibits, all as described in Section 2 below; and (b) construct, install, maintain and operate an underground water pipeline as described in Section 3 below.

Section 2. **Trail Easement.** The City shall have the right to use the Easement, or such portion of the Easement as the City shall elect, to construct, re-construct, install, and maintain such Improvements that the City shall elect to construct upon the Easement to permit

the use and operation of a public trail, and to inspect, and repair the Segment of the Trail and the Improvements. The City shall have the right to permit the public to pass and re-pass over the Trail on foot and on non-motorized bicycles. Motorized maintenance vehicles also shall be permitted on the Trail. Other motorized vehicles (such as snowmobiles, motorized dirt bikes, motorcycles and all terrain vehicles) shall be prohibited on the Trail.

The Improvements shall be limited to an appropriate surface for the Trail (such as gravel or asphalt); low-maintenance "canyon" landscaping consistent in appearance with the current surroundings (which may include, for example, ornamental grasses and rock); a 4' split rail (wood) fence (or comparable); unobtrusive, Trail-related signage; any appropriate irrigation/water system; and/or any appropriate electrical system and unobtrusive lighting. The Trail Segment and any Improvements shall be constructed in a manner to provide for easy access to the adjacent Big Cottonwood Stream by Grantor or other authorized persons for stream-maintenance purposes.

The City shall construct any Improvements at its cost, and shall ensure that all related work is performed in a professional and workmanlike manner, and that the balance of the Property, if disturbed by the City or its agents during construction, is returned to similar condition as prior to such disturbance. The City warrants that the Property shall remain free of any claims or liens based in whole or in part upon the construction of the Improvements.

There is hereby reserved unto Grantor, and any successor in interest as an owner of the Property or a portion thereof, the right to cross the Easement to provide ingress and egress to and from the Property, and to construct and maintain upon the Easement one or more concrete, asphalt or other hard surface driveways and/or walkways from the public street across the Easement.

Section 3. **Water Pipeline Easement.** The City shall have the right to use the Easement, or such portion of the Easement as the City shall elect, to construct, re-construct, install, maintain, use and operate, inspect, and repair an underground water pipeline and associated improvements (collectively the "*Waterline*"). The City shall construct the Waterline without cost or expense to Grantor, and shall ensure that all related work is performed in a professional and workmanlike manner, and that the balance of the Property, if disturbed by the City or its agents during construction, is returned to similar condition as prior to such disturbance. As an express condition of the grant of the Easement for the Waterline, Grantor, and any successor in interest as an owner of the Property or a portion thereof, shall be permitted to use the Waterline for the benefit of the Property upon the same terms and conditions of other similarly situated users of the Waterline. The City warrants that the Property shall remain free of any claims or liens based in whole or in part upon the construction of the Waterline.

Section 4. **Maintenance.** The City shall be solely responsible for maintaining, at its sole cost, the Trail Segment and its Improvements and the Waterline in good, attractive condition and repair. The City shall patrol the Trail at reasonable intervals and remove from the Property any litter, weeds or graffiti along the Trail. The City disclaims any responsibility to remove snow from the Trail Segment. Grantor shall have no obligation to remove snow from the Trail Segment. The City shall promptly repair any damage to the Property caused by any repair or maintenance of the Trail or its Improvements or the Waterline.

Section 5. **Signage.** The City may erect and maintain in place signage on the Easement to, *inter alia*, direct users to the Trail; encourage users to stay on the Trail; and prohibit littering, hunting, trapping, building fires, picking or injuring plants or trees, or injuring

or harassing wildlife. The size and location of such signage shall be subject to the reasonable approval of the Grantor. Such signage also may advise users that the property over which the Trail passes is private and that, in permitting its use by the public, the landowner shall have no liability regarding the use of the Trail by the public. The City may take steps to educate users in trail etiquette by including guidelines for users in maps or other trail publications.

Section 6. **No Interference.** Grantor shall not in any manner obstruct or interfere with the free and unimpeded public use of the Easement for Trail purposes. Grantor reserves for itself and its successors, assigns and designees the right to cross the Easement and to use the Easement for any and all purposes which do not materially interfere with the City's reasonable use of the Easement as provided herein and such use shall not be construed to interfere or impede the use of the Trail.

Section 7. **Duration.** The Easement granted herein shall be perpetual in duration; provided, however, that the City may terminate the Easement, in whole or in part, at any time through delivery to Grantor of a quitclaim deed or other written, notarized evidence of the City's termination of the Easement. Upon any termination of the Trail Easement by the City, at the election of Grantor, the City, at its sole cost and expense, shall remove any and all Improvements located on the Easement.

Section 8. **Covenants Run with Land.** The Easement shall (a) create an equitable servitude on the Property in favor of the City; (b) constitute a covenant running with the land; (c) bind every person having any fee, leasehold or other interest in any portion of the Property at any time or from time to time; and (d) inure to the benefit of and be binding upon Grantor and the City, their respective successors and assigns.

Section 9. **Assignment.** The City freely may assign its rights and/or delegate its duties under this Agreement to the County, if required by the County as a condition to use of ZAP funds for Trail purposes. City shall notify Grantor in writing of any such assignment/delegation. No such assignment/delegation shall relieve the City of the responsibility to ultimately assure full and timely performance of the City's obligations hereunder.

Section 10. **Immunity Act; Indemnity.** The City is a governmental entity under the "Utah Governmental Immunity Act" (UTAH CODE ANN. § 63-30d-101, *et seq.*) (the "*Immunity Act*"). Consistent with the terms of the Immunity Act, the City shall be responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees, but does not waive any (a) defenses otherwise available to the City under the Immunity Act, nor (b) any limits of liability currently provided by the Indemnity Act.

As express consideration for the execution and delivery of this Easement and Grantor's authorization to permit the City to grant access to the public over the Easement, , the City shall indemnify, defend and hold Grantor harmless from and against any and all claims, actions and proceedings (at law or in equity), and all associated costs and fees (including reasonable attorneys fees incurred by counsel reasonably selected by City or its insurers), arising from the use of the Easement by the City or the public as provided herein. In the application of such indemnification provision, as between the City and Grantor and its successors in interest, the City shall not assert any defense to its obligation to indemnify Grantor and its successors in interest based in whole or in part upon the Immunity Act; provided, however, that such limitation shall not be applicable to third party claimants other than Grantor and its successors in interest.

Section 11. **General Provisions.** The following provisions are also integral parts of this Agreement:

(a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement; provided, however, that if Section 10 is deemed to be void, voidable by the City, unenforceable or invalid, then the Easement herein granted for the Trail shall be deemed terminated.

(e) **Waiver of Breach.** Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

(f) **Cumulative Remedies.** The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

(g) **Amendment.** This Agreement may not be modified except by an instrument in writing signed by the parties hereto and recorded in the office of the Salt Lake County Recorder, State of Utah.

(h) **Time of Essence.** Time is the essence of this Agreement.

(i) **Interpretation.** This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(j) **Attorneys' Fees.** If any action or proceeding is brought by either party to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy proceeding.

(k) **Notice.** Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within three (3) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the parties at their respective addresses set forth above. In the event that one or more residences shall have been constructed upon the Property, then notice to Grantor shall also be sent to the mailing address of the residence or residences located on the Property.

DATED effective the date first-above written.

CITY:

ATTEST:

COTTONWOOD HEIGHTS, a Utah municipality

Linda W. Dunlavy, City Recorder

By: _____
Kelvyn H. Cullimore, Jr., Mayor

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On _____ 2012, personally appeared before me **KELVYN H. CULLIMORE, JR.** and **LINDA W. DUNLAVY**, who duly acknowledged to me that they executed the foregoing Easement Agreement as the mayor and the recorder, respectively, of **COTTONWOOD HEIGHTS**, a Utah municipality.

Notary Public

GRANTOR:

CABCO COTTONWOOD LLC,
a Utah limited liability company

By: _____
Adam Maher, Manager

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On _____ 2012, personally appeared before me **ADAM MAHER**, who duly acknowledged to me that he executed the foregoing Easement Agreement as the Manager of **CABCO COTTONWOOD, LLC**, a Utah limited liability company.

Notary Public

Exhibit "A"
to Easement Agreement
(Attach Map of Trail and Easement)

Exhibit "B"
to Easement Agreement

Legal Description of Easement

A public trail easement located in the Northwest Quarter of Section 25, Township 2 South, Range 1 East, Salt Lake Base and Meridian, said trail easement being fourteen (14') feet in width, the centerline of which is described as follows:

Beginning at a point on the Easterly line of Grantor's property, said point being located North 1713.36 feet and East 113.40 feet more or less from the West Quarter Corner of Section 25 Township 2 South, Range 1 East, Salt Lake Base and Meridian, (basis of bearings South 0°13'17" West between the West Quarter of Section 25 and the Southwest Corner of 25, said Township and Range. and running thence North 55°33'40" West 106.03 feet more or less to the westerly line of Grantor's property and point of ending for this easement.

Also containing a temporary construction easement across, through, and over Grantor's property as reasonably necessary and required to construct said trail within Grantor's property.

Beginning and ending sidelines of described public trail easement shall shortened or extended to begin and terminate on Grantor's property lines. It is the parties' intent for this easement's sidelines to coincide with the sidelines of the trail easement documents as they relate to the adjoining parcels and easement documents.

Tax Parcel No. 22-25-102-013